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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

ESVIN FERNANDO ARREDONDO
RODRIGUEZ, an individual AND A.F.A.J.,
a minor, BY HER GUARDIAN *AD LITEM*,
JEFFREY HAMILTON,

Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

Case No.: CV 22-02845-JLS-JC

**PLAINTIFFS' MOTION TO
EXCLUDE TESTIMONY AND
REPORT OF PROPOSED
EXPERT JUNE HAGEN
[*DAUBERT*]**

Hearing Date: March 29, 2024

Hearing Time: 10:30 a.m.

Judge: Hon. Josephine L. Staton

Courtroom: 8A

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant has proposed to offer rebuttal testimony from June Hagen (“Dr. Hagen”) in response to the employability assessments conducted by Plaintiffs’ vocational expert Mark Lieberman (“Mr. Lieberman”). Dr. Hagen’s testimony should be excluded from this case for two reasons. First, Dr. Hagen did not adequately prepare herself prior to writing her Rebuttal Reports (defined below), in failing to review relevant, available evidence. Thus, Dr. Hagen’s conclusions are not sufficiently supported by facts and data. Second, Dr. Hagen fails to show that she properly applied her professional experience or reliable principles or methods to reach her opinions in this case. The Rebuttal Reports contain only a single citation to authority from Dr. Hagen’s field of expertise and do not include any references to defined methods or principles. In deposition, Dr. Hagen admitted that she did not rely on methods or principles at all.¹ Moreover, after reviewing documents Defendant’s counsel had selected and sent her, Dr. Hagen relied solely upon the evidence that favored the Defendants, failing to engage with the evidence that opposed Defendant’s position. Such cherry-picking is routinely rejected by courts and further justifies excluding Dr. Hagen’s conclusions.

II. LEGAL STANDARD

Under Federal Rule of Evidence 702 (“Rule 702”), expert opinion is admissible if:

- (1) the witness is sufficiently qualified as an expert by knowledge, skill, experience, training, or education;
- (2) the scientific, technical, or other specialized knowledge will help the trier of fact to understand the

¹ The deposition of Dr. Hagen occurred on February 15, 2024. To date, Plaintiffs have not received a copy of the deposition transcript from the court reporter. See Declaration of Linda Dakin-Grimm in Support of Plaintiffs’ Motion to Exclude Testimony and Report of Proposed Expert June Hagen ¶ 7. Because the transcript was not available by the Court’s deadline for Daubert motions, Dkt. No. 51 at 2, Plaintiffs will file an amended Motion with citations to the deposition transcript when they receive the transcript from the court reporter.

1 evidence or to determine a fact in issue; (3) the testimony is based on
2 sufficient facts or data; (4) the testimony is the product of reliable
3 principles and methods; and (5) the expert has reliably applied the
4 relevant principles and methods to the facts of the case.

5 Fed. R. Evid. 702. To determine whether an expert is sufficiently qualified, a court
6 must examine whether the expert's qualifications and experiences are "relevant to
7 the determination of the facts in issue." *In re Canvas Specialty, Inc.*, 261 B.R. 12,
8 19 (C.D. Cal. 2001).

9 Once an expert is found to be qualified, a trial court must ensure that the
10 testimony of the expert "both rests on a *reliable* foundation and is *relevant* to the
11 task at hand." *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 579-80 (1993)
12 (emphasis added). Testimony rests on a "reliable foundation" if it is rooted "in the
13 knowledge and experience of the relevant discipline" while "testimony is relevant if
14 the knowledge underlying it has a valid connection to the pertinent inquiry." *City of*
15 *Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1043-44 (9th Cir. 2014) (citation and
16 internal quotation marks omitted).

17 A court's primary concern is "the soundness of [the expert's] methodology."
18 *Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d 457, 463 (9th Cir. 2014) (citation
19 and internal quotation marks omitted). When assessing scientific expert opinion, a
20 court may consider factors, such as "(1) whether the scientific theory or technique
21 can be (and has been) tested, (2) whether the theory or technique has been subjected
22 to peer review and publication, (3) whether there is a known or potential error rate,
23 and (4) whether the theory or technique is generally accepted in the relevant
24 scientific community." *United States v. Sandoval-Mendoza*, 472 F.3d 645, 655 (9th
25 Cir. 2006) (citation and internal quotation marks omitted). These factors are not
26 exhaustive, and a court may use its discretion "to decide how to test an expert's
27 reliability as well as whether the testimony is reliable, based on the particular

1 circumstances of the particular case.” *Primiano v. Cook*, 598 F.3d 558, 564 (9th Cir.
2 2010) (citation and internal quotation marks omitted).

3 Additionally, Federal Rule of Civil Procedure 26 governs parties’ disclosure
4 obligations and outlines the requirements for a written report by a witness retained
5 to provide expert testimony. Among other requirements, such a report must contain:
6 “(i) a complete statement of all opinions the witness will express and the basis and
7 reasons for them; (ii) the facts or data considered by the witness in forming them;
8 [and] (iii) any exhibits that will be used to summarize or support them[.]” Fed. R.
9 Civ. P. 26(a)(2)(B)(i)-(iii). “Th[is] duty to disclose is broad.” *United States v.*
10 *Bazaarvoice, Inc.*, 13-00133, 2013 WL 3784240, at *2 (N.D. Cal. July 18, 2013). In
11 particular, “‘facts or data’ as used in Rule 26(a)(2)(B)(ii) is to ‘be interpreted
12 broadly to require disclosure of any material considered by the expert, from
13 whatever source, that contains factual ingredients.’” *Santa Clarita Valley Water*
14 *Agency v. Whittaker Corp.*, 18-06825, 2020 WL 6260015, at *1 (C.D. Cal. Sept. 16,
15 2020) (quoting Fed. R. Civ. P. 26(a)(2)(B) advisory committee’s note to 2010
16 amendment).

17 **III. ARGUMENT**

18 **A. The Rebuttal Reports Are Not Based on Sufficient Facts or Data**

19 Expert testimony must be “based on sufficient facts or data.” *Turner v.*
20 *ThyssenKrupp Materials, N.A.*, 492 F. Supp. 3d 1045, 1048 (C.D. Cal. 2020)
21 (citation and internal quotation marks omitted). When “there is simply too great an
22 analytical gap between the data and the opinion proffered,” the expert opinion must
23 be excluded. *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997).

24 Here, exclusion is warranted because Dr. Hagen failed to review sufficient
25 facts or data prior to authoring her reports; indeed, she reviewed very little at all. Dr.
26 Hagen’s *Vocational Evaluation and Rebuttal of Plaintiff Employability Assessment*
27 *re: Esvin Fernando Arredondo Rodriguez* (the “Arredondo Rebuttal Report”) lists

1 just six documents in the report’s “Documents Reviewed” section. Arredondo
2 Rebuttal Report at 1. Those documents, all of which were selected and provided to
3 her by counsel, are (i) the two reports prepared by Plaintiffs’ experts on Mr.
4 Arredondo; (ii) a psychological evaluation of Mr. Arredondo done by psychiatrist
5 Amy Cohen, M.D., in June 2020; (iii) the transcript of Mr. Arredondo’s deposition;
6 and (iv) Mr. Arredondo’s Responses to Defendant’s First Set of Interrogatories. *Id.*
7 Similarly, Dr. Hagen’s *Vocational Evaluation and Rebuttal of Plaintiff*
8 *Employability Assessment re: [REDACTED]* (the “A.F.A.J. Rebuttal
9 Report” and, together with the Arredondo Rebuttal Report, the “Rebuttal Reports”) lists just 11 total documents in the “Documents Reviewed” section. A.F.A.J.
10 Rebuttal Report at 1. Those documents are (i) four school records, including two
11 academic transcripts and a [REDACTED]; (ii) the two expert reports produced by
12 Plaintiffs’ counsel relating to A.F.A.J.; (iii) a psychological evaluation of A.F.A.J.
13 done by Genero Rodriguez in June 2020; (iv) the transcript of A.F.A.J.’s deposition;
14 and (v) A.F.A.J.’s treatment records from [REDACTED].
15 *Id.*

16
17 Moreover, Dr. Hagen did not draw on her expertise to identify the relevant
18 pieces of evidence. Instead, Defendant’s counsel—not Dr. Hagen—determined what
19 materials Dr. Hagen reviewed. During her deposition, Dr. Hagen testified that she
20 only reviewed the documents that Defendant’s counsel sent her. She did not request
21 additional documents, and she made no follow-up requests for more information.
22 Dr. Hagen thus did not review the other documents in this case relevant to Plaintiffs’
23 experiences and injuries, including Plaintiffs’ respective sworn testimony that was
24 admitted in their asylum case, the extensive record of what Defendant did to
25 separated families like the Arredondos, any pleadings from this case, notes or
26 transcripts of Plaintiffs’ various interviews, or any of the many other factual records
27 produced in discovery.

1 Dr. Hagen also failed to conduct, or rely on, any significant academic research
2 for her Rebuttal Reports, including any research on the vocational harms that may
3 arise from a family separation² like the one that Plaintiffs experienced or from the
4 mental conditions that Plaintiffs suffer from, including [REDACTED]. In fact, she merely
5 assumed that the two plaintiffs did not suffer from [REDACTED] because Defendant's other
6 proposed expert, Bennett Williamson ("Dr. Williamson"), told her so. Thus, she
7 was wholly unprepared to make educated assessments about how Plaintiffs' mental
8 injuries, including [REDACTED], would impact their earning capacity and vocational
9 potential. For example, during her deposition, Dr. Hagen could not answer whether
10 experts in her field had observed a negative correlation between [REDACTED] and earnings
11 capacity.

12 Finally, further evidencing her inadequate preparation, despite relying on his
13 conclusions, Dr. Hagen failed to review the reports of Defendant's own psychologist
14 expert witness, Dr. Williamson. *See* Arredondo Rebuttal Report at 1; A.F.A.J.
15 Rebuttal Report at 1. Dr. Hagen stated that she was told that Dr. Williamson's report
16 had not been written by the time Dr. Hagen needed to submit her own report (even
17 though the reports were produced on the same date), so she instead had an eight-
18 minute phone call with Dr. Williamson to hear his opinions regarding both Plaintiffs.
19 Dr. Hagen acknowledged during her deposition that Dr. Williamson's report could
20 contain information that would cause her to change the conclusions in her report.
21 Nevertheless, she did not make an attempt to obtain and read it at any point after it
22 was authored.

23
24
25 ² Plaintiffs presented significant evidence showing how numerous entities, including government officials,
26 members of Congress, and private organization, explained and warned Defendant about the traumatic harm
27 family separation causes its victims. *See, e.g., Plaintiffs' Memorandum of Points and Authorities in Support*
28 *of Motion for Partial Summary Judgment* at 2-3, Dkt. No. 114-1. Dr. Hagen did not review any of this
evidence.

1 Despite failing to review key pieces of evidence, Dr. Hagen made sweeping
2 statements about what the evidence in the case *purports* to show. For example, in
3 the Arredondo Rebuttal Report, Dr. Hagen disagrees with Mr. Lieberman’s opinion
4 that Mr. Arredondo’s [REDACTED] will prevent Mr. Arredondo from seeking higher-paying
5 employment, claiming that “[t]here is no evidence of [Mr. Arredondo] being harmed
6 financially by his experience at the border.” Arredondo Rebuttal Report at 5. Not
7 having made a complete review of “the evidence,” however, Dr. Hagen is not
8 positioned to opine in this manner. Similarly, in the A.F.A.J. Rebuttal Report, Dr.
9 Hagen purports to opine that A.F.A.J. could “begin Community College with ESL
10 classes . . . which will improve her future earning capacity,” without any reference
11 to a method or principle to support her assertion. She simply says: “[t]here is no
12 reason [A.F.A.J.] would not be able to pursue a college education if given
13 encouragement and guidance.” A.F.A.J. Rebuttal Report at 6. These unsupported
14 generalizations are not proper expert testimony.

15 Dr. Hagen could not have made such statements had she actually reviewed all
16 of the relevant evidence, especially the evidence pertaining to the impact of the
17 injuries Plaintiffs sustained due to their forced separation at the border and
18 subsequent detentions. At a minimum, Dr. Hagen should have reviewed: (i)
19 Plaintiffs’ prior sworn testimony; and (ii) the extensive body of recognized authority
20 from the field of vocational rehabilitation regarding the relationship between
21 negative mental conditions, including [REDACTED], and a person’s earning capacity and
22 vocational potential. Yet Dr. Hagen did not review any of these. Instead, she simply
23 relied on Defendant’s counsel to decide for her what documents she should review
24 and conducted little, if any, independent research. In short, Dr. Hagen did not possess
25 the knowledge and information needed to justify the broad conclusions she included
26 in the Rebuttal Reports.

B. The Rebuttal Reports Are Not a Product of Reliable Principles or Methods

1. Dr. Hagen Fails to Show That She Properly Applied Her Professional Experience or Reliable Principles or Methods to Reach Her Conclusions

To be admissible, the expert’s testimony must be “the product of reliable principles and methods, and the expert must appl[y] the principles and methods reliably to the facts of the case.” *Nat’l Fire Prot. Ass’n, Inc. v. UpCodes, Inc.*, 21-05262, 2023 WL 6194385, at *1 (C.D. Cal. Sept. 7, 2023) (citation and internal quotation marks omitted). To ensure reliability, the court must “assess the [expert’s] reasoning or methodology, using as appropriate such criteria as testability, publication in peer reviewed literature, and general acceptance.” *Id.* (citation and internal quotation marks omitted). And where the witness “rel[ies] solely or primarily on experience, . . . witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts.” Fed. R. Evid. 702 advisory committee’s note to 2000 amendment.

The Rebuttal Reports simply do not reflect that Dr. Hagen properly applied her professional experience or reliable principles or methods to reach her conclusions. Her reports are from the “because I said so” school of expert opinion—which violates the Federal Rules of Evidence. Prior to writing the Rebuttal Reports, Dr. Hagen did not review any authorities or literature from her field except for the *single* study she cites only in the A.F.A.J. Rebuttal Report regarding the relationship between parental educational levels and child educational outcomes. *See* A.F.A.J. Rebuttal Report at 4; *see also* A.F.A.J. Rebuttal Report, Exhibit 1. Accordingly, the Rebuttal Reports generally lack citations to testable methodology, peer-reviewed studies, or other authoritative sources showing that Dr. Hagen used generally

1 accepted practices to derive her conclusions. Instead, her opinions are admittedly off
2 the top of her head: the Rebuttal Reports are based purely on her review of portions
3 of each Plaintiff's case file, which Defendant's counsel had selected and provided.

4 Because Dr. Hagen failed to properly to apply her professional experience or
5 a reliable method or principle when writing the Rebuttal Reports, the conclusions
6 therein are unreliable. For example, in the Mr. Arredondo Rebuttal Report, Dr.
7 Hagen states that Mr. Arredondo's current earning capacity is at the 25th percentile
8 of wages for workers in the category of Maintenance and Repair Workers.
9 Arredondo Rebuttal Report at 5-6. She anecdotally bases this opinion on Mr.
10 Arredondo's work history, level of English-speaking ability, and lack of high school
11 diploma. *Id.* Dr. Hagen does not explain what principle or methodology supports the
12 finding that those three characteristics justify assessing Mr. Arredondo's earning
13 potential at the 25th percentile. She expects to be believed because she said so. She
14 fails to provide any sources or citations showing that the unidentified reasoning she
15 used to reach this conclusion is reliable and generally accepted. She does not explain
16 her exclusion of other relevant factors, including Mr. Arredondo's extensive
17 experience in construction, his current skillset, or his strong work ethic. Thus, there
18 is simply no way of knowing whether Dr. Hagen's assessment of Mr. Arredondo's
19 earning potential has any validity.

20 As another example, in the A.F.A.J. Rebuttal Report, Dr. Hagen states that
21 Mr. Lieberman's opinion that "A.F.A.J. will have low earnings due to her experience
22 at the border . . . ignores other factors that affect her potential future earnings."
23 A.F.A.J. Rebuttal Report at 5. The factors Mr. Lieberman allegedly ignored include
24 A.F.A.J. not yet having any vocational skills and not yet graduating high school. *Id.*
25 Mr. Lieberman, however, used a specific methodology—the PEEDS-RAPEL
26 methodology—to form his opinion. PEEDS-RAPEL is a method specifically
27 designed to evaluate the earnings capacity "where the plaintiff is of a young age and

1 their academic, work, and earnings history may not be firmly established.” Mark
2 Lieberman, *Employability Assessment* [REDACTED] at 7 (Dec. 22,
3 2023). Dr. Hagen’s assertion disregards that Mr. Lieberman’s methodology
4 considers the very factors she identifies as “ignored.” It is almost as if she did not
5 actually read the Lieberman Report. To the extent her assertion could be construed
6 as an attack of the PEEDS-RAPEL methodology, Dr. Hagen fails provide any
7 sources or citations showing that the factors she identified are relevant to, but
8 excluded from, the PEEDS-RAPEL methodology or that those factors were not
9 properly considered in Mr. Lieberman’s application of that methodology. Instead,
10 she simply states that the factors are relevant and that Mr. Lieberman failed to take
11 them into account. These naked assertions do not satisfy Federal Rule of Evidence
12 702.

13 The Rebuttal Reports are replete with unsupported conclusions based on
14 unexplained methods and unjustified reasoning. Because the reports fail to
15 demonstrate that their conclusions were properly derived using trustworthy
16 techniques, the Court should exclude them.

17 2. Dr. Hagen Did Not Consider All Evidence She Reviewed and,
18 Instead, Only Considered the Evidence Favorable to
19 Defendant’s Position

20 “[C]ourts have consistently excluded expert testimony that ‘cherry-picks’
21 relevant data.” *EEOC v. Freeman*, 778 F.3d 463, 469 (4th Cir. 2015) (collecting
22 cases). Conclusions based on “rejecting or ignoring the great weight of the evidence
23 that contradicts [the expert’s] conclusion” are inadmissible because such
24 conclusions “do[] not reflect scientific knowledge, [are] not derived by the scientific
25 method, and [are] not ‘good science.’” *See In re Bextra & Celebrex Mktg. Sales*
26 *Practices & Prod. Liab. Litig.*, 524 F. Supp. 2d 1166, 1176 (N.D. Cal. 2007).

1 Dr. Hagen’s opinion that Mr. Lieberman should not have treated Plaintiffs as
2 having a [REDACTED] is based on impermissible cherry-picking. In the
3 Arredondo Rebuttal Report, Dr. Hagen disagrees “with Mr. Lieberman describing
4 Mr. Arredondo as having a [REDACTED].” Arredondo Rebuttal Report at 5.
5 Dr. Hagen notes that Mr. Lieberman had written that “Mr. Arredondo’s issues due
6 to his [REDACTED] would be consistent with the category of [REDACTED],” and she
7 objects to this assessment based solely on the fact that Dr. Williamson told her that
8 “Mr. Arredondo does not meet the criteria for a diagnosis of [REDACTED] nor a [REDACTED]
9 [REDACTED].” *Id.* Similarly, in A.F.A.J.’s Rebuttal Report, Dr. Hagen disagrees with Mr.
10 Lieberman’s treatment of A.F.A.J. as having a [REDACTED] because, during
11 their eight-minute conversation, “Dr. Williamson related to me that she does not
12 have a [REDACTED].” A.F.A.J. Rebuttal Report at 5-6.

13 However, Dr. Hagen fails to mention or consider that multiple mental health
14 professionals—including Dr. Kristin Samuelson, Dr. Amy Cohen (a Board-certified
15 psychiatrist), and Mr. Genaro Rodriguez (a licensed therapist)—had independently
16 concluded that one or both Plaintiffs displayed symptoms consistent with [REDACTED]. *See*
17 Kristin W. Samuelson, *Forensic Psychological Evaluation of* [REDACTED]
18 [REDACTED] at 22 (Dec. 22, 2023); Kristin W. Samuelson, *Forensic*
19 *Psychological Evaluation of Fernando Arredondo* at 16 (Dec. 22, 2023); Genaro
20 Rodriguez, *Psychological Evaluation of* [REDACTED] at 3
21 (June 2, 2020); Amy J. Cohen, *Psychological Evaluation of Esvin Fernando*
22 *Arredondo Rodriguez* at 12 (June 20, 2020).

23 Dr. Hagen was well aware of these other psychologists’ conclusions; she
24 listed their reports in the “Documents Reviewed” sections of the Rebuttal Reports.
25 Arredondo Rebuttal Report at 1; A.F.A.J. Rebuttal Report at 1. And the conclusions
26 were clearly relevant to the issue at hand; they relate directly to Mr. Lieberman’s
27 conclusion that Plaintiffs suffered from symptoms of [REDACTED], which qualify as a

1 [REDACTED]. The Rebuttal Reports nevertheless fail to acknowledge, let alone
2 justify, the omission of these opposing opinions.

3 In fact, rather than engaging with the fact that multiple medical professionals
4 had determined that Plaintiffs suffer from symptoms of [REDACTED], Dr. Hagen instead
5 obfuscates this fact. Dr. Hagen writes in the Rebuttal Reports that Mr. Lieberman
6 lacked a valid basis to treat Plaintiffs as having a [REDACTED] because no
7 psychologist or therapist had diagnosed them as such. Arredondo Rebuttal Report at
8 5; A.F.A.J. Rebuttal Report at 5. She ignores, however, that Mr. Lieberman clearly
9 stated that the term “[REDACTED]” “do[es] not represent any medical defined
10 definition of [REDACTED].” Mark Lieberman, *Employability Assessment Esvin*
11 *Fernando Arredondo Rodriguez* at 17 (Dec. 22, 2023). Instead, the term is defined
12 in the American Community Survey and means “[REDACTED]
13 [REDACTED]
14 [REDACTED]” *Id.* And Mr. Lieberman assessed Mr. Arredondo and A.F.A.J. as having
15 a [REDACTED] based on the multiple mental health professionals’ conclusions
16 that Plaintiffs suffered [REDACTED] consistent with [REDACTED], including
17 [REDACTED]. See Mark Lieberman, *Employability*
18 *Assessment Esvin Fernando Arredondo Rodriguez* at 12 (Dec. 22, 2023); Mark
19 Lieberman, *Employability Assessment* [REDACTED] at 6 (Dec. 22,
20 2023). Thus, Dr. Hagen’s statement that no psychologist had diagnosed either
21 Plaintiff with a [REDACTED] confuses Mr. Lieberman’s use of the term
22 “[REDACTED]” with a medical diagnosis and wrongly implies that no qualified
23 persons have found that Plaintiffs suffer from [REDACTED].

24 In short, Dr. Hagen’s selective and argumentative use of the evidence renders
25 her opinion on Plaintiffs’ [REDACTED] inadmissible. Her refusal to engage
26 with facts unfavorable to Defendant supports that she wrote the Rebuttal Reports to
27 support a specific, predetermined conclusion—that Plaintiffs’ did not have any

1 [REDACTED] and chose to only present facts supporting that conclusion.
2 Such cherry-picking produces unreliable opinions and justifies excluding Dr.
3 Hagen's testimony on this issue.

4 **IV. CONCLUSION**

5 Dr. Hagen's reports, opinions, and testimony should be excluded under
6 Federal Rule of Evidence 702: they are not based on sufficient facts or data, are not
7 the product of reliable methodologies, and do not reflect the reliable application of
8 methodology to the facts in issue. We respectfully request that the Court exclude Dr.
9 Hagen's reports, opinions, and testimony in their entirety.

10
11
12
13 Dated: February 23, 2024

Respectfully Submitted,
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Certificate of Compliance Pursuant to L.R. 11-6.2

The undersigned, counsel of record for Plaintiffs Esvin Fernando Arredondo Rodriguez and A.F.A.J certifies that this brief contains 3,511 words, which complies with the word limit of L.R. 11-6.1.

Dated: February 23, 2024

By: /s/ Victoria Colbert
Victoria Colbert